

1 THE HONORABLE DAVID G. ESTUDILLO
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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**
11 **AT TACOMA**

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13 SECURITIES AND EXCHANGE COMMISSION,

Case No. 3:18-cv-05761-DGE (GJL)

14 Plaintiff,

FINAL JUDGMENT AS TO
15 vs.
16 DEFENDANT JAMES D. MILLER

JAMES D. MILLER,

17 Defendant.

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This matter comes before the Court on the parties' Joint Motion for Entry of Final Judgment by Consent. (Dkt. No. 47) Having considered the parties' motion and the response to the Court's order to show cause (Dkt. No. 49), the Court finds the settlement is fair and reasonable and the public interest will not be disserved.

The Court finds the settlement is procedurally fair and the result of extended, good faith, arms-length negotiations. The Court further finds the settlement is substantively fair. The proposed terms are clear and would resolve the claims in the complaint. There does not appear to be any improper collusion or corruption in reaching the settlement.

Accordingly, the Court hereby enters the Defendant's Consent to Final Judgment as follows: the Securities and Exchange Commission having filed a Complaint and Defendant James D. Miller ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph XII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment, NOW THEREFORE:

1.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77q(a)(2) and (a)(3)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 13(b)(5) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78m(b)(5)] by knowingly circumventing a system of internal accounting controls, knowingly failing to implement a system of internal accounting controls, or knowingly falsifying required books, records and accounts.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
Defendant is permanently restrained and enjoined from violating Exchange Act Rule 13b2-1

1 [17 C.F.R. § 240.13b2-1] by falsifying, or causing to be falsified, required books, records, and
2 accounts.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
4 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following
5 who receive actual notice of this Final Judgment by personal service or otherwise: (a)
6 Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in
7 active concert or participation with Defendant or with anyone described in (a).

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9 IV.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant is permanently restrained and enjoined from violating Exchange Act Rule 13b2-
12 2(b) [17 C.F.R. § 240.13b2-2(b)] by, directly or indirectly, taking any action to coerce,
13 manipulate, mislead, or fraudulently influence any independent public or certified public
14 accountant engaged in the performance of an audit or review of the financial statements of an
15 issuer that are required to be filed with the Commission.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
17 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following
18 who receive actual notice of this Final Judgment by personal service or otherwise: (a)
19 Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in
20 active concert or participation with Defendant or with anyone described in (a).

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22 V.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
24 Defendant is permanently restrained and enjoined from violating Exchange Act Rule 13a-14
25 [17 C.F.R. § 240.13a-14] requiring that each principal executive and principal financial
26 officer of an issuer, at the time of filing of a report, must sign a certification at the time of
27 filing averring, among other things, that the report does not contain any untrue statement of a
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1 material fact or omit to state a material fact necessary to make the statements made, in light of
 2 the circumstances under which such statements were made, not misleading with respect to the
 3 period covered by the report, and as to the company's internal controls over financial
 4 reporting.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
 6 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following
 7 who receive actual notice of this Final Judgment by personal service or otherwise: (a)
 8 Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in
 9 active concert or participation with Defendant or with anyone described in (a).

11 VI.

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
 13 Defendant is permanently restrained and enjoined from aiding and abetting any violation of
 14 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20,
 15 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]
 16 by knowingly or recklessly providing substantial assistance to an issuer to file, or by filing or
 17 causing to be filed, with the Commission any report required to be filed with the Commission
 18 pursuant to Section 13(a) of the Exchange and the rules and regulations promulgated
 19 thereunder, which filed report omits to disclose any information required to be disclosed or
 20 such further information, if any, as may be necessary to make the statements, in light of the
 21 circumstances under which they were made not misleading.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
 23 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following
 24 who receive actual notice of this Final Judgment by personal service or otherwise: (a)
 25 Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in
 26 active concert or participation with Defendant or with anyone described in (a).

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by knowingly or recklessly providing substantial assistance to an issuer of securities registered pursuant to Section 12 of the Exchange Act to fail to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by knowingly or recklessly providing substantial assistance to an issuer of securities registered pursuant to Section 12 of the Exchange Act to fail to devise and maintain a sufficient system of internal accounting controls

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$35,000 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 78t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall make this payment within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Miller as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment,

1 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no
 2 part of the funds shall be returned to Defendant. The Commission shall send the funds paid
 3 pursuant to this Final Judgment to the United States Treasury.

4 The Commission may enforce the Court's judgment for penalties by the use of all
 5 collection procedures authorized by law, including the Federal Debt Collection Procedures
 6 Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court
 7 orders issued in this action. Defendant shall pay post-judgment interest on any amounts due
 8 after 30 days of the entry of this Final Judgment pursuant to 28 USC § 1961.

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10 XI.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of
 12 Defendant James D. Miller to Final Judgment is incorporated herein with the same force and
 13 effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings
 14 and agreements set forth therein.

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16 XII.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes
 18 of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523,
 19 the allegations in the complaint are true and admitted by Defendant, and further, any debt for
 20 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under
 21 this Final Judgment or any other judgment, order, consent order, decree or settlement
 22 agreement entered in connection with this proceeding, is a debt for the violation by Defendant
 23 of the federal securities laws or any regulation or order issued under such laws, as set forth in
 24 Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

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26 XIII.
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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall
2 retain jurisdiction of this matter for the purposes of enforcing the terms of this Final
3 Judgment.

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5 Dated: September 11, 2024.

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9 David G. Estudillo
10 United States District Judge
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